



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on January 21, 2009

[Approved on March 13, 2009]

Prepared by: Terry Wood

Meeting Location: Massachusetts Department of Environmental Protection, Central Regional Office, Worcester, MA.

- 1. Call to Order:** Debra Stake called the meeting to order at 12:41 p.m. Also present were Janine Commerford, Kirk Franklin, Jack Guswa, Christophe Henry, Gretchen Latowsky, and Robert Luhrs. Ms. Batchelder joined the meeting at approximately 1:12 p.m. Committee members absent: Deborah Farnsworth and Kelley Race. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Ron Viola, Terry Wood and Al Wyman. Also present was Mary Gardner of MassDEP.

Announcements: A motion was made and seconded to remove item 4.B. (Update re: Web Site Subcommittee) from the agenda and renumber the remaining agenda items. The motion passed unanimously.

- 3. Previous Minutes:** The draft minutes of the meeting held on December 18, 2008 were approved with minor edits.

4. Old Business

A. Status of CRTS

At Ms. Stake's request, the chair of each CRT reported on progress made since the December meeting.

B. Discuss policy regarding treatment of the case file and posting of information on the Web site when a private censure is issued

At last month's meeting, the Committee asked Ms. Wood to prepare a document showing different choices for recording private censures on the disciplinary history pages on the Board's Web site, and also different choices for treatment of the case file. Ms. Wood included the document in the packet for today's meeting.

Over the course of the past several meetings, the Committee has discussed whether to modify the current policy of keeping private all documents in a case the results in a private censure private to allow that some portion of the file documents be made public. The Committee had also discussed whether the current way private censures are displayed on the Board's Web site should be modified. At the present time, when a private censure is issued, the entry on the Board's Web site appears as follows:

Disciplinary History

Complaint Date	Complaint Number	Action	Action Date	Comments	Final Action
	N/A	Call Terry Wood		Call Terry Wood	YES

After discussion, a motion was made and seconded to: 1) change the way any future private censures are displayed on the Board's Web site to the following:

Complaint Date	Complaint Number	Action	Action Date	Comments	Final Action
	N/A	The Board issued non-public disciplinary action.			YES

and 2) to continue to keep all documents in the case files private. The motion passed with a vote of five (Batchelder, Henry, Franklin, Luhrs and Stake) to two (Commerford and Latowsky). Mr. Guswa abstained.

C. Request for Stay in 00C-04

At last month's meeting, the Committee had denied a motion by the LSP to stay the six-month suspension of the LSP's license which was scheduled to begin on January 5th, 2009 pursuant to the Board's Final Decision. The Committee had denied the stay on the grounds that it was premature because an appeal had not yet been filed by the LSP and also because the Committee believed the superior court was the more appropriate venue for the LSP to seek a stay.

Mr. Fierce reported that, since last month's meeting, the LSP had appealed the Board's final decision in this case to superior court. He stated that the Attorney General's (AG's) office

would be representing the Board in the appeal. At this point, Mr. Fierce, Ms. Stake and Mr. Franklin left the room because they are recused.

Ms. Read passed out a stipulation entered into by the AG's office and the LSP's attorney. She explained that the LSP is renewing his request to the Committee to grant a stay of the six-month suspension. The stipulation states that, in the event that the Committee does not grant the request for a stay, then the suspension will be stayed from today until the superior court holds a hearing on the LSP's motion for a stay. It was explained that the AG's office entered into the stipulation because the motion had been scheduled to be heard earlier this month but the attorney from the AG's office was unavailable. In exchange for the LSP's agreement to continue the hearing date to a later time, the AG entered into the stipulation.

The Committee discussed the motion for the stay and the fact that the suspension period began on January 5, 2009. The consensus of the Committee was to remain consistent with their decision last month to deny the LSP's motion for a stay because Committee members believed that both the decision that discipline was warranted in the case and the six-month suspension were appropriate. As expressed last month, the Committee reiterated their belief that it was more appropriate that the superior court hear and act on the motion and restated that the Committee would not file any opposition to the motion.

At the conclusion of the discussion, a motion was made and seconded to deny the LSP's motion for a stay and to not oppose the stay motion that the LSP filed in superior court. The motion passed unanimously. The suspension period is now stayed pursuant to the stipulation entered into between the LSP and the AG. The Committee requested that Ms. Read, as the Board's attorney, communicate to the LSP that his license was suspended from January 5, 2009 until the Board's vote this afternoon and, if he were asked on any application if he had been subject to discipline or if his license had been suspended, he would need to answer in the affirmative.

D. Press Releases after Final Decisions

Mr. Fierce stated that the LSP's attorney in case 00C-04 had complained because the Board had issued a press release regarding the final decision in this case even though the LSP still had a right to appeal to superior court, a right the LSP recently exercised. Mr. Fierce asked the Committee members whether they wanted to wait in any future cases to issue press releases regarding final decisions until all rights to judicial review had been exhausted. After discussion, the consensus of the Committee was that press releases should be issued once final decisions are issued regardless of whether the LSP planned to seek judicial review but the Committee would consider future press releases on a case-by-case basis.

5. Future Meetings

The Committee is scheduled to meet on March 13, 2009 and on April 14, 2009. Meeting locations are to be determined.

6. Adjournment: The meeting was adjourned at approximately 3:06 p.m.